

**Village of Vermontville**  
**Freedom of Information Act Policy and Procedure**

**I. INTRODUCTION**

The Freedom of Information Act, being 1976 PA 442 (MCL 15.231 to 15.246) ("FOIA") mandates disclosure of most public records. To fulfill this mandate, the Village has established this policy and procedure for handling FOIA requests to ensure that members of the public receive full and complete information requested regarding the affairs of government, while not unduly burdening Village government.

**II. FOIA COORDINATOR**

The Village Council has designated the Village Clerk as the FOIA Coordinator. Any questions regarding compliance with FOIA should be directed to the FOIA Coordinator. For administrative convenience, the FOIA Coordinator may designate an individual to act on his or her behalf in accepting and processing requests for the records of the Village of Vermontville.

**III. FOIA REQUESTS**

- A. Requests for Copies of Public Records – All requests for public records (either to receive copies of such records or to inspect such records) made pursuant to FOIA shall be made in writing. In the event a written FOIA request is received by any employee of the Village or member of the Village Council, a copy of the request shall be provided to the FOIA Coordinator on the same day it is received. All written requests for records pursuant to FOIA shall be processed by the FOIA Coordinator.
- B. Requests to Review Records – If a request is received to review records, facilities should be made available to inspect records during the Village's normal business hours and when the records can be reasonably made available. The person who wishes to inspect records shall submit a request form describing the requested documents prior to the Village allowing the inspection of the records.
- C. Requests Made by Fax, E-mail or other Electronic Means – These requests shall be deemed received by the FOIA Coordinator one business day after the date the electronic transmission is made and shall be handled in the same manner as a written request in subparagraph A above.
- D. Prohibition on Third-Party Requests.
  - 1. FOIA requests must be made and submitted to the Village by the person actually seeking the public record(s). Requests made by one person on behalf of another person may be denied. When the FOIA Coordinator reasonably believes that a request has been submitted in violation of this provision, the FOIA Coordinator may deny the request, or may require that the requester submit any or all of the following additional information, as applicable, before the request will be processed in accordance with this Policy:

- a) For an individual:
  - i) Written documentation that the individual exists, including, but not limited to, birth certificate, driver's license, marriage license, governmental identification card, social security card, or passport.
  - ii) An original, signed affidavit from the requester, notarized in accordance with MCL 55.287, attesting that the requester is (a) seeking the requested records in his or her own behalf, (b) is not making the request on behalf of or at the request of any third party, and (c) is not submitting the request in active concert or participation with any other person who is prohibited by law or by judicial order from submitting the request to the Village.
- b) For a business entity (corporation, partnership, company, etc.):
  - i) Written documentation that the business entity exists, including, but not limited to, articles of incorporation, business registration, copies of stock certificates, operating agreement, partnership agreement, dba registration, or similar types of documents.
  - ii) The names of all members of its board of directors, all of its incorporators, all of its officers and directors, all of its members, and all of its executive employees.
  - iii) The name and address of the business entity's registered agent.
  - iv) The address and phone number of the business entity's principal place of business.
  - v) The business entity's state of incorporation.
  - vi) An original, signed affidavit from the chief executive officer of the business entity, notarized in accordance with MCL 55.287, attesting that the business entity is (a) seeking the requested records in its own behalf, (b) is not making the request on behalf of or at the request of any third party, and (c) is not submitting the request in active concert or participation with any person who is prohibited by law or by judicial order from submitting the request to the Village.
- c) For other types of entities, associations or organizations:
  - i) Written documentation that the entity, association or organization exists, including, but not limited to its charter, bylaws or other founding documents.

- ii) The names of all members of its board of directors, all of its incorporators, all of its officers and directors, all of its members, and all of its executive employees.
  - iii) The address and phone number of the principal office of the entity, association or organization.
  - iv) An original, signed affidavit from the principal officer, director or principal employee of the entity, association or organization, notarized in accordance with MCL 55.287, attesting that the entity, association or organization is (a) seeking the requested records in its own behalf, (b) is not making the request on behalf of or at the request of any third party, and (c) is not submitting the request in active concert or participation with any person who is prohibited by law or by judicial order from submitting the request to the Village.
2. In instances when the FOIA Coordinator requests that any or all of the above documentation be submitted, the FOIA request shall not be deemed received by the Village until such time as all of the requested documentation has been received by the Village from the requester.
  3. Upon review of the requested documentation, if the FOIA Coordinator determines, in his or her sole discretion, that a FOIA request has been submitted in violation of this provision, the FOIA request may be denied. Written notification of the denial shall be sent to the requester in accordance with this Policy.
  4. Exception. The prohibition on third-party FOIA requests shall not apply to requests submitted by a licensed attorney, on behalf of the attorney's client.

#### IV. PROCESSING FOIA REQUESTS

The FOIA Coordinator shall maintain a log of all written requests received showing the nature and date of the request, determination of disposition, date of disposition and manner of final response to the FOIA request. Requests shall sufficiently describe the record to enable the FOIA Coordinator to identify and locate the record. Forms for utilization of FOIA procedures under this policy are available at the Village Hall.

- A. Time for Response – The FOIA Coordinator shall, no more than five business days after the request has been made, unless a single extension of not more than ten business days has been issued, or where the time limits have been agreed to upon in writing by the requesting person, provide one of the following responses:
  1. Grant the Request – A copy of the request for a public record along with all of the requested documents shall be sent to the person who requested the records on a response for public records form.

2. Deny the Request – The FOIA Coordinator shall sign and state the reasons for denial including an explanation of the requesting person’s right to seek a non-mandatory appeal from the FOIA Coordinator’s decision to the Village Council or a judicial review of the decision with the Eaton County Circuit Court. Failure to timely respond to the request constitutes denial. Denial may be made because, among other reasons, the record does not exist, it cannot be sufficiently identified from the description contained in the request, or the record is exempt.
  3. Grant the Request and Issue a Written Notice to the Requesting Person Denying Such a Request in Part – Material which is partially exempt and partially subject to disclosure shall be separated or deleted and the non-exempt material offered for copying or inspection. A general description of the separated or deleted information shall be provided to the requesting person, unless doing so would reveal the contents of the exempt information.
- B. Miscellaneous General Requirements for FOIA Requests – FOIA requests shall be handled in one or more of the following ways:
1. Provide a reasonable opportunity and facilities for inspecting and taking notes from the records for the requesting person.
    - a) Original records shall not be marked, defaced, destroyed, or otherwise altered. Any person examining public records shall bring to the examination only an erasable pencil with which to make notes or lists, etc. No pens or indelible writing instruments are allowed. No notes or writing of any kind shall be made on the documents themselves.
    - b) A Village staff member must be present at all times during the inspection of Village records if any original records are involved, to protect the records from loss, unauthorized alteration, mutilation, or destruction. In order to defray the Village’s cost of this monitoring service, a fee shall be paid to the Village for personnel time, as provided in Section V of this Policy.
    - c) Original records shall not be removed from the area provided for inspection and note taking. Original documents may be removed from and replaced in Village files only by authorized Village staff.
    - d) A requester may not remove records or files from the area provided for inspection unless those documents are copied specifically for the requester by authorized Village staff.
    - e) The FOIA Coordinator will determine, on a case-by-case basis, whether a requester may inspect an original public record, or only a copy of the record. A fee may be charged for copies made to enable public inspection of records, in accordance with Section V of this Policy. Situations where original records are likely to require copying prior to inspection include the following:

- i) The records include exempt information that must be redacted.
  - ii) The records are old or delicate, or contain information that could not easily be replicated.
  - iii) The records are in digital format or are part of a database not available for public inspection.
  - iv) Providing copies would be less disruptive to the performance of Village functions than providing the necessary staff oversight required for inspection of original records.
- f) Labor costs for searching, examining, reviewing, or deleting and separating exempt from non-exempt information when the failure to charge a fee results in unreasonably high costs to the Village as determined by the FOIA Coordinator. In determining what is an unreasonably high cost to the Village, the FOIA Coordinator shall consider, without limitation, the following factors:
- i) Volume of public records requested;
  - ii) Complexity of searching for, examining, reviewing of a public record, and the deletion and separation of exempt from nonexempt information;
  - iii) The need to search for, examine, and review public records from different departments, commissions, boards, or committees for the Village;
  - iv) The anticipated amount of labor;
  - v) The available staffing for responding to the request;
  - vi) The need to obtain a legal opinion or review; and
  - vii) Similar factors as designated by the FOIA Coordinator.
2. A person requesting to inspect Village records must make an appointment with the FOIA Coordinator. Appointments will occur during the Village's regular business hours. The date and time of appointments for inspection will be determined by the FOIA Coordinator.
3. The FOIA Coordinator will make reasonable efforts to allow a requester to inspect records for up to four hours per appointment; provided, however, that inspections will be cut short, postponed or rescheduled when necessary to avoid unreasonable interference with the Village staff's performance of their primary functions.

4. Provide copies of records if so requested. If a fee is charged, a copy of the record shall not be released until a fee has been received or the person making the request demonstrates an inability to pay or is a recipient of public assistance as provided in Article V, B below.
5. On a request for records which are issued on a subscription basis, e.g., Village Council meeting minutes, on six-month renewal subscription basis, a listing of the requestor's name, address, records subscribed to, charge and expiration date of subscription shall be maintained by the FOIA Coordinator or his/her designee.
6. Determine actual cost of mailing, duplication and search time when compiling the record.
7. If a fee is charged, the person completing the request shall compute the charges and refer the completed charge slip for providing records to the Village Clerk. If it is anticipated that a charge will surpass Fifty and 00/100 (\$50.00) Dollars, a good faith deposit may be collected from the requestor; this deposit cannot exceed one-half of the total anticipated fee.
8. The Village Clerk shall accept the payment for services rendered and issue a receipt for the same, or, in the few instances where deferred payment is indicated, prepare an invoice and forward it to the requesting person.
9. The FOIA does not require the Village to make a compilation, summary or report of the information.

## **V. FEES AND COSTS**

- A. In General – A charge may be made for a public record search, actual mailing costs, copying charges and cost of sending materials.
- B. Copying Charges – The incremental costs of duplication or publication shall be charged at a rate established by the Village Council via resolution per page, including labor for copying, for materials copied by the Village; and if sent to a commercial copy center for copying, the Village shall receive reimbursement for its actual charges. There shall be no charge for the first Twenty and 00/100 (\$20.00) Dollars of the fee for each request to an individual who proves indigence or is the recipient of public assistance. State guidelines for determining welfare may be used to determine the indigence. Generally, at the discretion of the FOIA Coordinator, charges may be waived, in any case, providing that the service is in the public interest.
- C. The Village has limited in-house capabilities for copying photographs, audio or videotapes, microforms, maps or plans. If a person requests that copies be made of these or large documents which must be copied off-site or reproduced in electronic means (and on an electronic storage device, such as a USB drive, CD-Rom, or other device for storage of electronic data), the FOIA Coordinator will determine and assess those costs. If an employee of the Village is required to deliver and/or pick up the public records and/or copies of public records, the labor hours spent and applicable mileage (at Village rates) will also be applied to the charges of the person(s) requesting the public records.

## **VI. RECORD RETENTION**

The FOIA Coordinator shall maintain all FOIA requests on file for no less than one year.

## **VII. EXEMPTIONS TO FOIA REQUEST**

The FOIA includes twenty categories of documents that are exempt. The following list does not contain all statutory exemptions, only the most relevant to Village matters are set forth:

- A. Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy (related to the individual's private life, not to his or her public one);
- B. Records or information specifically exempted from disclosure by statute;
- C. A public record which is exempt based upon one of the approved exemptions remains exempt as long as the original considerations still apply, when that record is provided to an employee or commission in connection with the performance of the duties of that employee or commission;
- D. Information or record subject to attorney-client privilege or other privileges recognized by statute or court rule;
- E. A bid or proposal by a person is exempt from disclosure until the time of the public opening of bids or proposals;
- F. Test questions and answers, scoring keys and other examination instruments or data used to administer public employment tests;
- G. Testing data developed by the Village to determine whether bidders' products meet Village specifications for purchasing those products are exempt, only if disclosure would reveal that only one bidder met the specifications;
- H. Appraisals of real property to be acquired by the Village are exempt from disclosure until an agreement is entered into or three years have elapsed after making the appraisal;
- I. Trade secrets or commercial or financial information voluntarily provided for use in developing governmental policy;
- J. Communications and notes within or between public bodies may be exempt from disclosure if communications are advisory in nature and meet the following conditions: (i) cover other than purely factual materials; (ii) are preliminary to final determinations of policy or action by the Village and; (iii) the public interest in frank communication outweighs the public interest in disclosure;
- K. Records of any campaign committee, including committees that receive state money from state campaign fund are exempt from disclosure;
- L. Records of Village security measures;

- M. Documents concerning a civil action between a requesting party and the Village;
- N. Records disclosing the social security number of any person;
- O. Deprive a person of the right to a fair trial or important administrative adjudication; and
- P. The information is submitted upon a promise of confidentiality by the public body.

### **VIII. APPEALS**

If a person's request for a public record is denied, in whole or in part, the person may file a written appeal of the decision in accordance with the following process:

1. The appeal must be submitted in writing to the Village Council, c/o the Village Clerk.
2. The written appeal must specifically state the word "appeal" and identify the reason or reasons for the reversal of the denial.
3. Where a written appeal is received by the Village Clerk consistent with this Policy and the Act, the Village Council shall either: (a) place the appeal on the agenda for the next regularly scheduled meeting, to be decided within ten days thereafter; or (b) schedule a special meeting to consider the appeal, which special meeting should be held no later than ten days following the next regularly scheduled meeting.
4. The Village Council may deliberate and shall take one of the following actions in response to the filing of an appeal:
  - a) Reverse the denial.
  - b) Issue a written notice to requesting person affirming the denial.
  - c) Reverse the denial in part and issue a written notice to the requesting person affirming the denial in part.
  - d) Under unusual circumstances, issue a notice extending not more than ten business days the period during which the Village Council shall respond to the written appeal. Only one written notice extending the response time is allowed.

**IX. THE VILLAGE COUNCIL MAY AMEND OR SUPPLEMENT THIS POLICY, FROM TIME TO TIME, IN THE VILLAGE COUNCIL'S SOLE DISCRETION.**

**X. A COPY OF THIS POLICY SHALL BE AVAILABLE AT THE VILLAGE OF VERMONTVILLE OFFICE.**

**XI. THE EFFECTIVE DATE OF THIS POLICY IS May 16, 2013.**